IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 156 of 1996

HON'BLE MR.JUSTICE N.G.NANDI

and

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMANBHAI DALABHAI MACHHI

Versus

STATE OF GUJARAT

Appearance:

MR SURESH LEUVA for Appellant

MR AJ DESAI, APP, for Respondent

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

and

HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 08/10/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.C.PATEL)

1. The appellant Ramanbhai Dalabhai Machhi was the accused in Sessions Case No.124 of 1994 before the Sessions Judge, Panchmahals, who, by his judgement and order dated 18th December 1995, convicted the appellant of the offence under section 302 of IPC, and sentenced him to life imprisonment and to pay the fine of Rs.500/-, in default, to suffer R.I. for two months.

2. The appellant was charged with causing the death of his wife Taraben by sprinkling kerosene on her and setting her ablaze. The incident occurred on 3.6.1994 in the house of the appellant at village Patan, Taluka Lunawada.

3. It is not in dispute that Taraben died of burns. The evidence of Dr.Jayantilal Shrimali (PW4) who carried out the postmortem on 4.6.1994 shows that Taraben had received 95 degree burns and the burns are on the whole body except (1) right forearm, back from wrist to elbow with palm and all five fingers, (2) left palm and fingers, (3) both sole of feet and (4) forehead.

4. The prosecution case rests on three written dying declarations made before Dr. Sharadaben Chaturbhai (PW10), Shri Navnitlal Maneklal Soni ((PW5), and Dr. Prabhakar Ramubhai Bhatia (PW11). It is also the prosecution case that she had made oral dying declarations before Somabhai Sakalbhai Machhi, her father (PW3) and Dalabhai Somabhai, her brother (PW6).

5. The evidence of Chuthabhai Virabhai (PW7), who was the Sarpanch in the village, shows that the incident had occurred at about 8 O' clock in the morning. On that day when he was at home, he was informed that a woman had received burns. He went to the home of the appellant. The woman who had received the burns was lying on the cot. He sent for a rickshaw and she was taken to Lunawada Cottage Hospital in the rickshaw. She was admitted there. A doctor informed the police, and PSI Pandya came there. The Mamlatdar was also informed. At this stage he was declared hostile because he did not support the prosecution case that Taraben had told him that her husband had set her ablaze after sprinkling kerosene.

6. Similarly, Hareshbhai Motibhai who was the nephew of the appellant and aged about 10 years (PW9) said that at the time of incident they were playing outside the house and Taraben's sari caught fire when she poured kerosene in the Chula. However, he too was declared

hostile because he did not support the prosecution case that he had seen the appellant setting fire to Taraben.

7. However, the evidence of Dr. Sharadaben Chaturbhai (PW10), who was the medical officer in the Cottage Hospital, Lunawada, shows that Taraben was brought to hospital at about 9.45 a.m. on 3.6.1994. According to her, Taraben, when questioned about the history of the burns, said that her husband had caught her and threw her on the cot and set fire to her after sprinkling kerosene on her. When this witness was first examined, she had not brought the case papers, but subsequently she was recalled and she produced the case papers at Exhs.35 and 36. In Exh.35 she recorded the statement of Taraben to the effect that her husband had caught her and threw her on the cot and set fire to her after sprinkling kerosene. There is also the thumb impression of Taraben below the statement. In Exh.36 Dr. Shardaben noted that she had taken dying declaration and the patient was conscious and was able to answer the question.

8. According to Dr. Shardaben, she had also informed the police and the police sent a Yadi (Ex.24) to Navnitlal Maneklal Soni, who was the Deputy Mamlatdar (PW5). His evidence shows that on receiving the Yadi for recording the dying declaration, he went to the Cottage Hospital, Lunawada. He met the Medical Officer and he was told by the doctor that the patient was conscious. The woman was lying on a table in an adjoining room. He went there and asked her as to what had happened, and she said that in the morning her husband Ramanbhai Dalabhai had poured kerosene and set her on fire. The dying declaration is at Exh.23. It bears the endorsement of Dr. Shardaben (PW10) to the effect that the patient was conscious and was able to answer the question. It also bears the thumb impression of Taraben.

9. In the meantime Somabhai Sakalbhai Machhi (PW3), the father of Taraben, was informed by his sister's son Ramanbhai Motibhai that Taraben had been set on fire by her husband and she had been taken to the Cottage Hospital at Lunawada. Somabhai Sakalbhai also went to the hospital and, according to him, when he asked Tara as to what happened, she told him that her husband had set her on fire after pouring kerosene. He went to the police station and lodged his complaint (Exh.41).

10. Thereafter Taraben was taken to the Civil Hospital at Godhra. The evidence of Dr. Prabhakar Bhatia (PW11) shows that he was on duty as Medical

Officer in the Civil Hospital on 3.6.1994. At about 12 O' clock Taraben was brought there from Lunawada Cottage Hospital. The patient was fully conscious and she herself gave the history. She said that her husband had set her ablaze after pouring kerosene. Dr. Prabhakar Bhatia recorded the said history as dying declaration in the MLC Register. The relevant entry No.1501/94 in the register is at Exh.32.

11. Panchnama of the scene of offence Exh.32 shows that there was earthen plaster in the house and there was a heavy smell of kerosene around the cot, and on the plaster below the cot. The sample of earth was also collected. FSL Report Exh.12 shows that kerosene was found in the earth collected from the place of the incident. Traces of kerosene were also found in the piece of skin taken from the body of the deceased. According to Somabhai, the father of Taraben, she had been married to the appellant about five years ago. They pulled on well for about two years, but thereafter the appellant started harassing Tara. Tara had returned to his place and stayed with them for about 12 months. Thereafter a number of persons came from the appellant's village and persuaded him to send Taraben saying that the appellant had mended his ways and they will be responsible if anything happens to Tara. According to Somabhai, on the occasion of his nephew's marriage, Tara came alone, and when he asked her as to why the appellant had not come, she said that he had given the excuse that he had not received the "Kankotri". After the marriage was over, Tara went back and the incident had occurred on 3.6.1994.

12. The appellant, when his statement was recorded under section 313 of the Criminal Procedure Code, filed a written statement (Exh.44). According to him, their marriage life was happy and he had also written a letter to that effect. He said in his statement that on the date of the incident he had gone to Lunawada for treatment since he was not well and during his absence Tara had received accidental burns while cooking dal. However, there is nothing on record to show that the appellant had gone to Lunawada for treatment and there is no substance in the plea of alibi which was taken for the first time in the further statement under section 313 of Cr.P.C.

13. Learned counsel for the appellant Shri Suresh Leuva has taken us through the entire evidence on record. He submitted that Taraben had received 95 degree burns and it is doubtful whether she was conscious and mentally

fit to give dying declarations as alleged by the prosecution. However, Dr. Shardaben (PW10) who recorded the dying declaration of Taraben immediately after she was brought to the Cottage Hospital, and Dr. Prabhakar Bhatia (PW11) who recorded dying declaration of Taraben when she was brought to the Civil Hospital at Godhra, have been cross examined at length. But nothing has been elicited to show that Taraben was not fit to make the dying declarations. There is no reason to discard the evidence of these two doctors. There was no reason for them to concoct such dying declarations. The dying declaration recorded by Dr. Shardaben (PW10) bears the thumb impression of Taraben. Similarly, Navnitlal Maneklal Soni, Deputy Mamlatdar (PW5), also recorded the dying declaration of Taraben after ascertaining from Dr. Shardaben and taking her endorsement that Taraben was in a fit condition to make the dying declaration. The evidence of Somabhai, the father of the complainant also shows that previously the relations between the appellant and Taraben were strained and because it was only at the urging of other interested persons from the village of the appellant that Taraben was sent back. Taraben had no reason to falsely implicate the appellant if she had received accidental burns. All the dying declarations are consistent. Therefore, in our opinion, they are genuine, truthful and reliable, and there is no reason to discard any of them. The learned Sessions Judge was, therefore, justified in relying on the dying declarations for convicting the appellant of the offence under section 302 of IPC. No interference is called for in the appeal. The appeal, therefore, fails and is dismissed.

[N.G. NANDI, J.]

[M.C. PATEL, J.]

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